

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Service Quality, Customer)	WC Docket No. 08-190
Satisfaction, Infrastructure and)	
Operating Data Gathering)	

TO: The Commission

REPLY COMMENTS OF THE RURAL NEBRASKA LOCAL EXCHANGE CARRIERS

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SUMMARY

Great Plains Communications, Inc., Hemingford Cooperative Telephone Company, Keystone-Arthur Telephone Company, K&M Telephone Company, Inc., Nebraska Central Telephone Company and Northeast Nebraska Telephone Company (collectively, the Rural Nebraska LECs), by their attorney, hereby submit these reply comments in response to the Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released September 6, 2008 (Order/NPRM), in the captioned proceeding.

The Commission proposes to extend ARMIS-type reports to all carriers, including small incumbent local exchange carriers (ILECs) such as the Rural Nebraska LECs. The NPRM does not explain why the FCC needs more data. Some of the commenting parties suggested uses for the data, but none have justified the substantial burden of collecting the data at the federal level from such a broad range of carriers. The Rural Nebraska LECs reiterate their request for the Commission to terminate the proceeding, or to grant an exemption for rural LECs and their affiliates. Without such action, the rules would violate the Paperwork Reduction Act, a 2001 warning from the Office of Management and Budget (OMB), the Regulatory Flexibility Act, and the Small Business Paperwork Relief Act of 2002.

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The Commission proposes to extend ARMIS-type reports to all carriers, including small incumbent local exchange carriers

¹ Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (rel. Sept. 6, 2008) [hereinafter Order/NPRM].

(ILECs) such as the Rural Nebraska LECs. The NPRM does not explain why the FCC needs more data. Some of the commenting parties suggested uses for the data, but none have justified the substantial burden of collecting the data at the federal level from such a broad range of carriers. The Rural Nebraska LECs reiterate their request for the Commission to terminate the proceeding, or to grant an exemption for rural LECs and their affiliates, as discussed further below. Without such action, the rules would violate the Paperwork Reduction Act, a 2001 warning from the Office of Management and Budget (OMB), the Regulatory Flexibility Act, and the Small Business Paperwork Relief Act of 2002. These issues are addressed in these reply comments and two separate reply comments filed today by the Rural Nebraska LECs.²

BACKGROUND

The Rural Nebraska LECs are small ILECs serving rural areas of Nebraska. In addition to providing local exchange service, some of the Rural Nebraska LECs have affiliates that provide broadband service, long distance service, and in some instances, cable TV service.

² Reply Comments of the Rural Nebraska Local Exchange Carriers on the Initial Regulatory Flexibility Analysis, WC Docket No. 08-190, FCC 08-203 (filed Dec. 15, 2008); Reply Comments of the Rural Nebraska Local Exchange Carriers on the Information Collections, WC Docket No. 08-190, FCC 08-203 (filed Dec. 15, 2008).

Several of them serve fewer than 1000 lines. They all have fewer than 1500 employees (the size threshold for small businesses under the Regulatory Flexibility Act).³ Some of the Rural Nebraska LECs have fewer than 25 employees (the size threshold for small businesses under the Small Business Paperwork Relief Act of 2002).⁴ Their telecom affiliates are of similar size, or smaller. Indeed, the LECs typically share staff with their affiliates. Given their small size and correspondingly small staff, the Rural Nebraska LECs and their affiliates would be especially impacted by any increased regulatory reporting requirements.

I. NO PARTIES HAVE IDENTIFIED A NEED FOR THE FCC TO COLLECT DATA AT THE FEDERAL LEVEL

In their Comments, the Rural Nebraska LECs pointed out that before releasing the NPRM, the Commission should have determined why it needs to collect more data. But the Commission did not do so.⁵ Other commenters pointed out this deficiency as well.⁶ The Wireless Communications Association International (WCAI) summed

³ NPRM app. C para. 5.

⁴ Id. para. 44.

⁵ Rural Nebraska LECs Comments at 3-5.

⁶ E.g., Verizon and Verizon Wireless Comments at 2 (there is no need for ARMIS data); AT&T Comments at 3 (FCC must identify a specific need for the data); Sprint Nextel Comments at 4.

up this situation by noting that the ARMIS Reports are "a solution in search of a problem."⁷ Indeed, most of the commenters opposed the imposition of ARMIS reports.⁸

Only a handful of commenters attempted to find reasons for the Commission to collect data. But these commenters fell short of the showings needed to justify this substantial regulatory burden, as shown below.

A. THE FCC WARNED THE PARTIES THAT FEDERAL DATA COLLECTIONS SHOULD NOT SUBSTITUTE FOR WHAT THE STATES CAN DO THEMSELVES

As parties tried to conjure up a need for the federal data collection, a threshold consideration should have been the Commission's warning about the types of reasons that will not hold muster. In the Order, the Commission warned parties against trying to justify federal reporting requirements via purely state needs. The Commission held that states do not need federal reports so that states can ensure just and reasonable rates, or so that states can rely on the federal reports for state consumer protection activities.⁹

⁷ WCAI Comments at 1.

⁸ E.g., Verizon and Verizon Wireless Comments at 12; National Cable & Telecommunications Association (NCTA) Comments at 2; Sprint Nextel Comments at 3; WCAI Comments at 4 ("Commission should terminate the proceeding").

⁹ Order paras. 9, 14.

[T]he Commission '[does] not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely.' Any interest by state commissions or other groups in comparing intrastate service quality between states, or within a state between carriers, does not create a federal need, and nothing we do today prevents state commissions from exercising their state authority to seek any relevant information, or from standardizing their data collections with each other.¹⁰

B. ONLY THREE STATES ATTEMPTED TO FIND REASONS FOR COLLECTING MORE DATA

With this warning as a background, only three states filed comments - leading one to conclude that the other 47 states do not envision a need for the Commission to collect more data at the federal level. The three commenting states -- Michigan, Texas and California -- each proffered reasons for the FCC to collect more data, but failed to heed the Commission's aforementioned warning, and fell short of providing the justifications needed under the Regulatory Flexibility Act and the Paperwork Reduction Act.

1. MICHIGAN

The Michigan Public Service Commission (MPSC) asserts that it needs federal reports to ensure that the data it collects at

¹⁰ Id. para. 10.

the state level is reasonable.¹¹ The MPSC clearly ignored the Commission's warning about trying to use state needs to justify federal data collection. The MPSC would have thousands of carriers nationwide submit large volumes of data to the FCC for the sole purpose of making the MPSC feel more confident about the data it collects at the state level. Surely, the rest of the country should not be punished for any perceived shortcoming of the data collected in Michigan.

The MPSC also asserts that it has relied on ARMIS data "in many contested cases and other proceedings."¹² But the MPSC does not explain what ARMIS data was used and whether there were other ways to obtain the data. The MPSC doesn't explain why data should be collected at the federal level from all carriers across the country just in case the data could be of use in some unknown future MPSC proceedings.

In sum, the MPSC fails to present a valid need for collecting data at the federal level.

2. TEXAS

The Texas Office of Public Utility Counsel (TxOPC) does no better. The TxOPC wants data to be collected at the federal

¹¹ MPSC Comments at 3.

¹² Id.

level from all carriers so that the Public Utility Commission of Texas (PUCT) can "compare the level of telecommunications service quality delivered in Texas to that of other states."¹³ But that's exactly the crux of the FCC's warning. The FCC said it will not collect data at the federal level just so states can compare service quality between states.

The states have other ways to obtain data. They could work together, through NARUC or other industry forums, to share data collected from carriers. They could obtain data in one of the many ways cited by CTIA and the Competitive Enterprise Institute (CEI) in their comments.¹⁴

In sum, like the MPSC, the TxOPC fails to present a valid need for collecting data at the federal level.

3. CALIFORNIA

The California Public Utilities Commission (CPUC) tried to heed the FCC's warning, and proposes uses for data collected at the federal level, such as: (a) policy-making, (b) investment decisions, (c) determining whether carriers are providing high quality service, meeting public safety goals and deploying broadband, and (d) determining whether market conditions are

¹³ TxOPC Comments at 3.

¹⁴ CTIA Comments at 3; CEI Comments at 2-3; see also Qwest Comments at 3.

competitive.¹⁵ These goals are as ambiguous as the ones presented by the FCC. The CPUC does not explain why the existing FCC data collections are insufficient to meet these goals, and why data must be collected at the federal level, rather than by the states. Moreover, the CPUC admits that it has armed consumers with data about the communications industry through its own "Consumer Protection Initiative."¹⁶ The CPUC doesn't explain why its own data collection is insufficient.

Without determining the exact data that is needed at the federal level, CPUC proceeds to seize the ARMIS Reports and suggest that portions of ARMIS Reports 43-05, 43-06, 43-07 and 43-08 should be collected. However, Verizon showed that the ARMIS data is useless to consumers and for broadband and public safety policy making. For example, Verizon shows that much of the data is available via other sources, and some of the data doesn't make sense in today's network environment.¹⁷

In short, CPUC's effort to create federal needs for collecting ARMIS data falls far short, and is only exacerbated by its suggestion to use existing ARMIS Reports.

¹⁵ CPUC Comments at 3-6.

¹⁶ Id. at 6.

¹⁷ Verizon and Verizon Wireless Comments att. A; see also Qwest Comments at 2-5 (questioning the usefulness of ARMIS-type data).

II. THE COMMENTERS THAT FAVOR EXPANDED REPORTING REQUIREMENTS FAILED TO RECOGNIZE THE CONSIDERABLE BURDENS OF COMPLIANCE

The burdens of compliance with the proposed reporting requirements are clear to the commenters that opposed the reports. For example, the Rural Nebraska LECs estimated that the cost of compliance for a small LEC could range from tens of thousands of dollars to hundreds of thousands of dollars for each rural LEC. The Commission estimates the staff hours involved in producing the current ARMIS Reports at issue to be about 1500 hours per year per company.¹⁸ Verizon estimates the burden to be much greater. To produce the ARMIS infrastructure and service quality reports, Verizon dedicates the equivalent of six full-time employees to generating the reports; uses about 70 employees in gathering data; and indirectly involves hundreds of other employees.¹⁹ Multiply these estimates by the thousands of

¹⁸ Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 73 Fed. Reg. 43,933 (FCC July 29, 2008) (319 hours for each of ARMIS Reports 43-05 and 43-07); Public Information Collection(s) Approved by Office of Management and Budget, 71 Fed. Reg. 29,961 (FCC May 16, 2006) (720 hours for ARMIS Report 43-06); Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 72 Fed. Reg. 5715 (FCC Feb. 7, 2007) (139 hours for ARMIS Report 43-08).

¹⁹ Verizon and Verizon Wireless Comments at 9; see also Sprint Nextel Comments at 5 (companies that currently don't file ARMIS reports will have a high initial cost for preparing the reports); Hughes Network Systems, LLC Comments at 3 (heavy burden that is not offset by any insights gained from the additional

companies that would become subject to the expanded reporting requirements, and the burden can readily be hundreds of millions of dollars.

The CPUC, MPSC and TxOPC did not even attempt to address the burden of compliance.

The other commenter that endorsed expanded reporting requirements was Free Press. While suggesting that expanded reporting would somehow be useful, Free Press asserts that "modernizing the reporting system to collect broadband infrastructure and service quality data would not create an additional regulatory burden."²⁰ Free Press obviously hasn't grasped the fact that thousands of carriers that currently do not submit ARMIS data (such as wireless carriers and small LECs) could be required to start generating such data.

To pass muster under the Regulatory Flexibility Act and the Paperwork Reduction Act, the FCC must show a "significant benefit" that justifies the burden. When such benefit was not shown in 2001 for expanding service quality reporting to all carriers, the OMB did not approve the proposed reporting requirement.²¹ The same situation is present here, but magnified

data); NCTA Comments at 4 (substantial costs of compliance).

²⁰ Free Press Comments at 8.

²¹ Letter from Edward Springer, OMB, to Judy Boley, FCC, CC Docket No. 00-229 (Jan. 29, 2001).

many-fold. The proposed reporting requirement would be applied to thousands of companies without any clear benefits. As such, the proposed reports would violate the Regulatory Flexibility Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act of 2002.

III. THE SOLUTION: TERMINATE THE PROCEEDING OR EXEMPT SMALL ILECS AND THEIR AFFILIATES

Many commenters echoed the request of the Rural Nebraska LECs for the Commission to terminate the proceeding.²² And several commenters offered the alternative of exempting their industry - such as the wireless carriers and the satellite providers.²³

But it was only the parties representing small ILECs that specifically based their requested exemption on the Regulatory Flexibility Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act of 2002. The Rural Nebraska LECs and the Rural Vermont ITCs requested an exemption for small ILECs. OPASTCO/WTa requested an exemption for rural ILECs and rural ILEC broadband providers. As shown in the parties'

²² E.g., WCAI Comments at 4 ("Commission should terminate the proceeding").

²³ Verizon and Verizon Wireless Comments at 7 (unnecessary to extend reporting requirements to the wireless industry); Satellite Industry Association Comments at 3.

comments, small ILECs meet the employee threshold for the Regulatory Flexibility Act, and many meet the threshold for the Small Business Paperwork Relief Act of 2002.

The Rural Nebraska LECs want to clarify that their requested exemption should apply to their ILEC companies as well as the affiliates of those companies. The Commission stated that the proposed reporting requirements may apply to facilities-based broadband providers and telecommunications carriers. Small ILECs often have affiliates that provide interexchange service, broadband service or CATV service. These affiliates may or may not be facilities-based. And depending on which carriers would be subject to the reporting requirements adopted in this proceeding, the small ILEC and/or its affiliates may be subject to the reporting requirements.

The reasons provided by the commenters for exempting small ILECs from any reporting requirements would apply also to their affiliates. The affiliates are smaller than the ILECs themselves. They typically have fewer employees, or share some of the employees with the ILEC. So if an exemption were granted to small ILECs based on their size pursuant to the Regulatory Flexibility Act, Paperwork Reduction Act and Small Business Paperwork Relief Act of 2002, that same reasoning would compel an exemption for their affiliates.

For these reasons, the Rural Nebraska LECs submit that, if

the Commission does not terminate the proceeding, then the Commission should grant an exemption to all "small ILECs and their affiliates."

CONCLUSION

As shown above, the Commission and commenters have not shown why the Commission needs to collect more data. Moreover, the Commission and commenters failed to heed the OMB's warning about imposing ARMIS-type reporting burdens without clear benefits. To resolve this situation, the Commission could terminate this proceeding, or exempt small ILECs and their affiliates from any reporting requirements adopted in this proceeding.

Respectfully submitted,
RURAL NEBRASKA LECs

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CERTIFICATE OF SERVICE

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 15th day of December, 2008, I have sent a copy of the foregoing to the following:

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